



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,013	04/12/2007	Wilfried Neuber	03472.000001.	7035

5514 7590 04/28/2009  
FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10112

EXAMINER
----------

KHALIL, AHMED

ART UNIT	PAPER NUMBER
----------	--------------

3635

MAIL DATE	DELIVERY MODE
-----------	---------------

04/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,013	<b>Applicant(s)</b> NEUBER, WILFRIED	
	<b>Examiner</b> AHMED KHALIL	<b>Art Unit</b> 4127	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/27/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This communication is a First Office Action on the Merits. Claims 1-12, as originally filed, are pending and have been considered as follows.

#### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: Claim 1 recites the limitation "each of its two ends" in lines 5 and 6. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.
2. Claims 9-12 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claims 9-12 have not been further treated on the merits.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent

Art Unit: 4127

protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation "an oval with two curved sections", and the claim also recites "preferably semicircular" which is the narrower statement of the range/limitation.

Claims 7 and 8 are rejected under this section as they depend from claim 6.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sullivan (US 3,623,622).

As per claim 1, Sullivan discloses a safety locking closure (10, figure 10) having a cover body (20) and with at least one locking means (14) arranged on the cover body

Art Unit: 4127

(20), said locking means (14) having a spring section (65) and, arranged thereon, an engagement section (56) that can be brought into engagement with a part (15) of a frame (12), characterized in that the spring section (65) is attached by each of its two ends (section opposite to ends 68 and 66) to the cover body (20) and is otherwise separated from the cover body (20) (figure 10), and the engagement section (56) is arranged between the two ends (66 and 68) of the spring section (65).

As per claim 2, Sullivan discloses that the spring section (65) extends approximately parallel to cover body (20) (figure 10).

As per claim 3, Sullivan discloses that the spring section (65) is designed as an annular body (figure 10), which is attached to the cover body (20) by a retaining section (60) that essentially joins the two ends (two sides of spring section 65) of the spring section (65).

As per claim 4, Sullivan discloses that the annular body (65) has the approximate shape of a circle (figure 10).

As per claim 5, Sullivan further discloses that the engagement section (56) is arranged at a location essentially diametrically opposite the retaining section (56, figure 10).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 4127

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US 3,623,622).

As per claim 6, Sullivan discloses all the element of the claimed invention as per claims 1-5, but fails to disclose that the annular body has the approximate shape of an oval with two, preferably semicircular, curved sections and two essentially elongated sections connecting these two curved sections to one another.

However it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the safety locking closure of Sullivan to include an annular body having the approximate shape of an oval with two, preferably semicircular, curved sections and two essentially elongated sections connecting these two curved sections to one another, because it has been held that where the only difference between the prior art and the claim is a recitation of relative shape, and the claimed element would not perform differently than the prior art, the claimed element is not patentably distinct from the prior art. See MPEP 2144.04.

As per claim 7, Sullivan discloses that the retaining section (side opposite to ends 66 and 68) is located on one elongated section (quarter opposite to ends 66 and 68) and the engagement section (56) is located in the other elongated section (68) (figure 10).

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US 3,623,622) in view of Pruss (US 5,435,455).

Sullivan discloses all of the structural limitations of the claimed invention as per claim 7 and further discloses that the elongated section (68) bearing the engagement section (56) is recessed (figure 10) relative to the end of the curved section (opposite sides of section 65), but fails to disclose that the ends of the two curved sections are connected by the elongated section.

Pruss discloses a locking device (1) having an elongated section (straight section of wall 1.2, figure 2) bearing the engagement section (10), two curved sections (opposite sides of wall 1.2) and the ends of the two curved sections (opposite sides of wall 1.2) are connected by the elongated section (straight section of wall 1.2, figure 2).

From the teaching of Pruss, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the safety locking closure of Sullivan to include an elongated section connecting the two ends of the curved sections as taught by Pruss to make the locking plug easy to install and remove (column 1, lines 24-25).

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Van Buren, Jr. (US Re. 30,326) discloses a panel hole closure.

Boik (US 4,504,009) discloses a closure having means for retention in tubular container.

Rathmann (US 6,945,733) discloses a cover for drainage device.

Fries et al (US 4,456,397) discloses a road inspection manhole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED KHALIL whose telephone number is (571)270-5744. The examiner can normally be reached on Mon-Fri 7:30 AM to 5:00 PM (Alt. Fri. Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-272-6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



Application/Control Number: 10/575,013

Page 8

Art Unit: 4127

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AK/

Examiner, Art Unit 4127

/Lynda Jasmin/

Supervisory Patent Examiner, Art Unit 4127